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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GERALD M. CASTLE, JR.;)
AND MICHELLE J. CASTLE,)

Plaintiffs,)

v.)

MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS,)
INC.; WELLS FARGO BANK,)
NA; FANNIE MAE; AND DOES)
1-100, INCLUSIVE,)

Defendants.)

Case No. EDCV 11-00538 VAP
(DTBx)

**[Motion filed on July 14,
2011]**

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

Plaintiffs, Gerald M. Castle, Jr. and Michelle J. Castle (collectively, "Plaintiffs"), filed this action in the Superior Court of California for the County of San Bernardino alleging that Defendants Mortgage Electronic Registration Systems, Inc. ("MERS"), Wells Fargo Bank, NA ("Wells Fargo"), and Fannie Mae ("Fannie Mae") (collectively, "Defendants") wrongfully foreclosed on their residence in San Bernardino, California. (See Doc. No. 1 (Not. of Removal), Ex. A (Compl.).) Defendants

1 removed the action to this Court on the basis of
2 diversity jurisdiction. (See Not. of Removal at 2-3
3 (citing 28 U.S.C. §§ 1332, 1441).) Plaintiffs
4 subsequently filed a first amended complaint ("FAC").
5 (Doc. No. 8.) Defendants then filed a motion to dismiss
6 Plaintiffs' FAC ("Motion"), pursuant to Federal Rule of
7 Civil Procedure 12(b)(6). (Doc. No. 21.) The Court
8 finds the Motion is appropriate for resolution without
9 a hearing and accordingly VACATES the hearing set for
10 August 15, 2011, at 2:00 p.m. See Fed. R. Civ. P. 78,
11 L.R. 7-15. Having considered the papers filed in support
12 of, and in opposition to, the Motion, the Court GRANTS
13 the Motion for the reasons below.

14 15 **I. BACKGROUND**

16 **A. Factual Summary**

17 By grant deed, Plaintiffs acquired the residence
18 located at 5907 N. Honeysuckle Lane, San Bernardino,
19 California 92407 (the "Property") on September 25, 2005.
20 (FAC. ¶ 8.) Plaintiffs signed a promissory note in the
21 amount of \$245,000.00, which was secured by a Deed of
22 Trust recorded against the Property on November 15, 2005.
23 (FAC ¶ 9, Ex. B.) The Deed of Trust identifies Alliance
24 Title Co. as the "trustee" and MERS as both the "nominee"
25 of the lender as well as the "beneficiary under this
26 Security Instrument." (Id.) The Deed of Trust provides
27 that MERS has the right to foreclose on the Property:
28

1 "Borrower understands and agrees that . . . MERS (as
2 nominee for Lender and Lender's successors and assigns)
3 has the right . . . to foreclose and sell the Property .
4 . . ." (Id. at 3 (emphasis added).)

5
6 Plaintiffs defaulted on their mortgage payments, and
7 Wells Fargo, care of Cal-Western Reconveyance Corporation
8 ("Cal-Western"), recorded a "Notice of Default and
9 Election to Sell under Deed of Trust" ("NOD") on March
10 15, 2010. (FAC, Ex. C.) The NOD states that MERS, as
11 beneficiary of the Deed of Trust, "does hereby elect to
12 cause the trust property to be sold to satisfy the
13 obligations secured thereby." (Id. at 2.) On May 14,
14 2010, Cal-Western substituted for Alliance as the
15 trustee. (FAC, Ex. D.) On June 16, 2010, Cal-Western
16 recorded a "Notice of Trustee's Sale." (FAC, Ex. F.)
17 Fannie Mae purchased the Property on July 6, 2010, at the
18 Trustee's Sale. (FAC, Ex. H at 1-2.) On July 27, 2010,
19 Wells Fargo assigned the Trust Deed to Fannie Mae. (FAC,
20 Ex. G (Trustee's Deed Upon Sale).)

21
22 Plaintiffs failed to vacate the premises following
23 the foreclosure. Accordingly, on November 29, 2010,
24 Fannie Mae filed an unlawful detainer action ("Unlawful
25 Detainer Action") against Plaintiffs in the Superior
26 Court for the County of San Bernardino. (FAC ¶¶ 19-20;
27 Ex. I at 1-2 (Writ of Possession); Defs.' Suppl. RJN, Ex.

1 A (Unlawful Detainer Compl.).) On February 25, 2011, the
2 Superior Court entered default judgment in Fannie Mae's
3 favor and ordered Plaintiffs to relinquish possession of
4 the Property. (Id.; Defs.' Suppl. RJN, Ex. B (Judgment);
5 FAC, Ex. I at 1-2 (Writ of Possession).) On March 10,
6 2011, Fannie Mae obtained a Writ of Possession for the
7 Property. (FAC ¶ 20, Ex. I at 1-2.) On March 30, 2011,
8 the Superior Court issued a "Notice to Vacate," which
9 stated, "By virtue of the Writ of Execution for
10 Possession/Real Property (eviction), issued out of the
11 above court, you are hereby ordered to vacate the
12 premises described on the writ." (FAC, Ex. I at 3
13 (Notice to Vacate).)

14 15 **B. Procedural History**

16 On March 28, 2011, approximately one month after the
17 Superior Court issued judgment in Fannie Mae's favor,
18 Plaintiffs filed the instant action against Defendants in
19 state court, alleging that the foreclosure and trustee's
20 sale were procedurally improper. According to
21 Plaintiffs, Cal-Western's substitution of trustee was
22 invalid because it was recorded two months after the NOD.
23 (FAC ¶ 20.) Thus, at the time Cal-Western initiated the
24 foreclosure, it was not the Trustee. (FAC 11.)
25 Moreover, Plaintiffs allege Ohio Savings "had already
26 been closed by the FDIC," (id.) and Wells Fargo was not a
27 beneficiary in the chain of title (id. ¶ 12). Plaintiffs
28

1 assert four claims: (1) wrongful foreclosure; (2)
2 wrongful eviction; (3) quiet title; and (4) unfair
3 business practices. (See generally FAC.)
4

5 On April 5, 2011, Defendants removed the action to
6 this Court on the basis of diversity jurisdiction. (Not.
7 of Removal at 2-3.) On May 22, 2011, Defendants filed a
8 motion to dismiss (Doc. No. 6), and Plaintiffs responded
9 by filing the FAC on June 2, 2011 (Doc. No. 8). The
10 Court accordingly denied Defendants' motion to dismiss as
11 moot. (Doc. No. 13.)
12

13 On July 14, 2011, Defendants filed the instant Motion
14 (Doc. No. 21) and a request for judicial notice ("Defs.'
15 RJN") (Doc. No. 22). Defendants move to dismiss the FAC
16 on the grounds that Plaintiffs' claims are barred by res
17 judicata. Alternatively, Defendants argue Plaintiffs
18 fail to state claims for relief under Federal Rule of
19 Civil Procedure 12(b)(6). Plaintiffs filed an opposition
20 ("Opposition") to the Motion on July 27, 2011.¹ (Doc.
21

22 ¹ Under Local Rule 7-9, a party must file opposition
23 papers no later than 21 days before the date designated
24 for hearing the motion. As the hearing on the Motion is
25 scheduled for August 15, 2011, Plaintiffs should have
26 filed their opposition papers no later than July 25,
27 2011. Plaintiffs accordingly filed the Opposition two
28 days late, without explanation. Under Local Rule 7-12,
the Court may construe failure to file opposition timely
as consent to granting the motion. See L.R. 7-12 ("The
failure to file any required paper, or the failure to
file it within the deadline, may be deemed consent to the
granting or denial of the motion."). The Court

(continued...)

1 No. 23.) Defendants filed a reply ("Reply") (Doc. No.
2 24) and a supplemental request for judicial notice
3 ("Defs.' Suppl. RJN") (Doc. No. 25) on August 2, 2011.
4

5 **II. LEGAL STANDARD**

6 Federal Rule of Civil Procedure 12(b)(6) (hereafter
7 "Rule 12(b)(6)") allows a party to bring a motion to
8 dismiss for failure to state a claim upon which relief
9 can be granted. As a general matter, the Federal Rules
10 require only that a plaintiff provide "'a short and plain
11 statement of the claim' that will give the defendant fair
12 notice of what the plaintiff's claim is and the grounds
13 upon which it rests." Conley v. Gibson, 355 U.S. 41, 47
14 (1957) (quoting Fed. R. Civ. P. 8(a)(2)); Bell Atl. Corp.
15 v. Twombly, 550 U.S. 544, 555 (2007). In addition, the
16 Court must accept all material allegations in the
17 complaint as true and construe them in the light most
18 favorable to the nonmoving party. See Doe v. United
19 States, 419 F.3d 1058, 1062 (9th Cir. 2005); ARC Ecology
20 v. U.S. Dep't of Air Force, 411 F.3d 1092, 1096 (9th Cir.
21 2005).
22
23
24

25
26 ¹(...continued)
27 nevertheless considers the Opposition in the interest of
28 justice.

1 "While a complaint attacked by a Rule 12(b)(6)
2 motion to dismiss does not need detailed factual
3 allegations, a plaintiff's obligation to provide the
4 'grounds' of his 'entitlement to relief' requires more
5 than labels and conclusions, and a formulaic recitation
6 of the elements of a cause of action will not do." Bell
7 Atl., 550 U.S. at 555 (citations omitted). Rather, the
8 allegations in the complaint "must be enough to raise a
9 right to relief above the speculative level." Id.

10
11 In other words, the allegations must be plausible on
12 the face of the complaint. See Ashcroft v. Iqbal, 556
13 U.S. ___, 129 S. Ct. 1937, 1949 (2009). "The
14 plausibility standard is not akin to a 'probability
15 requirement,' but it asks for more than a sheer
16 possibility that a defendant has acted unlawfully. Where
17 a complaint pleads facts that are 'merely consistent
18 with' a defendant's liability, it stops short of the line
19 between possibility and plausibility of 'entitlement to
20 relief.'" Id. (citations and internal quotations
21 omitted).

22
23 Although the scope of review is limited to the
24 contents of the complaint, the Court also may consider
25 exhibits submitted with the complaint, Hal Roach Studios,
26 Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19
27 (9th Cir. 1990), and "take judicial notice of matters of
28

1 public record outside the pleadings," Mir v. Little Co.
2 of Mary Hosp., 844 F.2d 646, 649 (9th Cir. 1988).

3
4 If a court concludes dismissal is appropriate, leave
5 to amend "shall be freely given when justice so
6 requires." Fed. R. Civ. P. 15(a). The Ninth Circuit has
7 held that "'[t]his policy is to be applied with extreme
8 liberality.'" Eminence Capital, L.L.C. v. Aspeon, Inc.,
9 316 F.3d 1048, 1051 (9th Cir. 2003) (quoting Owens v.
10 Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th
11 Cir. 2001)). Leave to amend should only be denied on a
12 showing of bad faith, undue delay, prejudice to the
13 opposing party, or futility of the amendment. Royal Ins.
14 Co. of Am. v. Sw. Marine, 194 F.3d 1009, 1016 (9th Cir.
15 1999).

17 **III. DISCUSSION**

18 **A. Preclusion**

19 Under 28 U.S.C. § 1738, federal courts are required
20 to give full faith and credit to state court judgments.
21 See San Remo Hotel, L.P. v. City & Cnty. of San
22 Francisco, 545 U.S. 323, 336 (2005). That is, state
23 court judgments have the same preclusive effect in
24 federal court as they would have in the state's own
25 court. Migra v. Warren City Sch. Dist. Bd. of Educ., 465
26 U.S. 75, 81 (1984) ("It is now settled that a federal
27 court must give to a state-court judgment the same
28

1 preclusive effect as would be given that judgment under
2 the law of the State in which the judgment was
3 rendered."); Brodheim v. Cry, 584 F.3d 1262, 1268 (9th
4 Cir. 2009). "The fact that a plaintiff requests a
5 different type of relief, or even presents a different
6 legal theory, does not negate or lessen the binding
7 effect of the previous state court judgment." Moore v.
8 City of Costa Mesa, 678 F. Supp. 1448, 1450 (C.D. Cal.
9 1987).

10
11 A defendant may raise the affirmative defense of
12 preclusion by way of a motion to dismiss under Rule
13 12(b)(6). See Scott v. Kuhlmann, 746 F.2d 1377, 1378
14 (9th Cir. 1984). The doctrine of res judicata "is a rule
15 of fundamental and substantial justice, of policy and of
16 private peace, which should be cordially regarded and
17 enforced by the courts." Federated Dep't Stores, Inc. v.
18 Moitie, 452 U.S. 394, 401 (1981) (citations omitted).
19 The doctrine "rests upon the sound public policy that
20 there must be an end of litigation" and, accordingly,
21 persons who have had a fair opportunity to litigate an
22 issue may not again have it adjudicated. Lai v. Quality
23 Loan Serv. Corp., No. CV 10-2308 PSG (PLAx), 2010 WL
24 3419179, at *3 (C.D. Cal. Aug. 26, 2010) (citing Dillard
25 v. McKnight, 34 Cal 2d 214 (1949)).

1 The term "res judicata" often is understood to
2 encompass both claim preclusion and issue preclusion.
3 Here, Defendants appear to raise claim preclusion, though
4 their arguments could apply to either doctrine. The
5 Court accordingly examines each doctrine in turn. For
6 the reasons set forth below, the Court finds Plaintiffs'
7 claims are barred under the doctrines of claim and issue
8 preclusion.

9
10 **1. Claim Preclusion (Res Judicata)**

11 "Under res judicata, a final judgment on the merits
12 of an action precludes the parties or their privies from
13 relitigating issues that were or could have been raised
14 in that action." Allen v. McCurry, 449 U.S. 90, 94
15 (1980). "California, as most states, recognizes that the
16 doctrine of res judicata will bar not only those claims
17 actually litigated in a prior proceeding, but also claims
18 that could have been litigated." Palomar Mobilehome Park
19 Ass'n v. City of San Marcos, 989 F.2d 362, 364 (9th Cir.
20 1993).

21
22 As a threshold matter, both parties employ federal
23 claim preclusion law in their papers. (See Mot. at 4-5;
24 Opp'n at 5-6.) In a diversity of citizenship action,
25 however, a federal court applies the preclusion rules of
26 the state in which it sits. Taylor v. Sturgell, 553 U.S.
27 880, 891 n.4 (2008); Semtek Int'l Inc. v. Lockheed Martin

1 Corp., 531 U.S. 497, 508-09 (2001). Thus, as the basis
2 for the Court's jurisdiction here is diversity,
3 California, not federal, claim preclusion law applies.

4
5 In California, the doctrine of claim preclusion, also
6 known as res judicata, "describes the preclusive effect
7 of a final judgment on the merits." Mycogen Corp. v.
8 Monsanto Co., 28 Cal. 4th 888, 896 (2002). In
9 California, "claim preclusion . . . prevents relitigation
10 [(1) after a final judgment on the merits] [(2)] of the
11 same cause of action in a second suit [(3)] between the
12 same parties or parties in privity with them." Id. at
13 897 (citations omitted); Goddard v. Sec. Title Ins. &
14 Guarantee Co., 14 Cal. 2d 47, 51 (1939) ("[A] final
15 judgment, rendered upon the merits by a court having
16 jurisdiction of the cause, is conclusive of the rights of
17 the parties and those in privity with them, and is a
18 complete bar to a new suit between them on the same cause
19 of action.").

20
21 **i. Final Judgment on the Merits**

22 The parties sharply dispute whether there was a final
23 judgment on the merits in the Unlawful Detainer Action.
24 To determine the preclusive effect of a state court
25 judgment, federal courts look to state law. Palomar
26 Mobilehome Park Ass'n, 989 F.2d at 364. A dismissal for
27 failure to state a claim, or failure to prosecute,
28

1 constitutes final judgment for purposes of res judicata
2 analysis. Plaut v. Spendthrift Farm, Inc., 514 U.S. 211,
3 228 (1995). Likewise, under California law, "[t]he
4 doctrine of res judicata applies even against a default
5 judgement." Carey v. United States, No. CIV
6 S-08-2504-JAM-CMK, 2010 WL 1904841, at *6 (E.D. Cal. May
7 7, 2010) (citing Morris v. Jones, 329 U.S. 545, 550-51
8 (1947)).

9
10 Here, the Superior Court entered judgment against
11 Plaintiffs on February 25, 2011, and issued a Writ of
12 Possession in Defendant Fannie Mae's favor on March 18,
13 2011. (Suppl. RJN, Ex. A; FAC, Ex. I.) As discussed
14 more fully in Section III(A)(1)(ii) infra, courts have
15 found that where a state court enters judgment against a
16 borrower in an unlawful detainer action and issues a writ
17 of possession, as here, this constitutes a final judgment
18 on the merits, even if the judgment was entered in
19 default. See, e.g., Albano v. Nw. Fin. Haw., Inc., 244
20 F.3d 1061, 1064 (9th Cir. 2001) (holding a default
21 judgment in a foreclosure action was res judicata to
22 borrowers' later-filed TILA claim).

23
24 **ii. Same Cause of Action**

25 In determining whether claim preclusion bars another
26 action or proceeding, California courts examine whether
27 the two actions concern a single cause of action under
28

1 the primary rights doctrine. Mycogen, 28 Cal. 4th at
2 904; Manufactured Home Cmtys. v. City of San Jose, 420
3 F.3d 1022, 1031 (9th Cir. 2005). This doctrine provides:

4
5 A "cause of action" is comprised of a "primary
6 right" of the plaintiff, a corresponding "primary
7 duty" of the defendant, and a wrongful act by the
8 defendant constituting a breach of that duty. The
9 most salient characteristic of a primary right is
10 that it is indivisible: the violation of a single
11 primary right gives rise to but a single cause of
12 action.

13 Mycogen, 28 Cal. 4th at 904 (internal quotation and
14 alterations omitted). Thus, "all claims based on the
15 same cause of action must be decided in a single suit; if
16 not brought initially, they may not be raised at a later
17 date." Id. at 897. "If an action involves the same
18 injury to the plaintiff and the same wrong by the
19 defendant then the same primary right is at stake even if
20 in the second suit, the plaintiff pleads different
21 theories of recovery, seeks different forms of relief
22 and/or adds new facts supporting recovery." Eichman v.
23 Fotomat Corp., 147 Cal. App. 3d 1170, 1174 (1983)
24 (internal citations omitted); Manufactured Home Cmtys.,
25 420 F.3d at 1032 ("Different theories of recovery are not
26 separate primary rights."). "[T]he harm suffered" is
27 "the significant factor" in defining a primary right.
28 Craig v. Cnty. of Los Angeles, 221 Cal. App. 3d 1294,
1301 (1990); accord Balasubramanian v. San Diego Cmty.
Coll. Dist., 80 Cal. App. 4th 977, 992 (2000); Branson v.
Sun-Diamond Growers, 24 Cal. App. 4th 327, 340 (1994).

1 Accordingly, the threshold question presented is
2 whether the Superior Court judgment in the Unlawful
3 Detainer Action brought by Fannie Mae precludes
4 Plaintiffs from challenging the validity of the
5 foreclosure and trustee's sale in this action. The
6 judgment in the Unlawful Detainer Action bars this action
7 "if both suits seek to vindicate the same primary right."
8 Mycogen, 28 Cal. 4th at 904. Defendants contend that all
9 of the claims presented in this action were resolved in
10 the unlawful detainer proceedings. Plaintiffs counter
11 that the unlawful detainer judgment only has limited
12 preclusive effect, given that the issues presented in
13 this action were not litigated in the underlying state
14 court action, i.e., the Superior Court did not reach the
15 merits. Specifically, Plaintiffs assert that because the
16 Superior Court entered default judgment, it did not
17 consider their contention that the notice of default and
18 trustee's sale were procedurally improper. (Opp'n at 5.)
19 The Court finds Defendants' arguments more persuasive.

20
21 First, even if Plaintiffs did not raise the
22 procedural defect defense in the Unlawful Detainer
23 Action, res judicata bars litigation of any issue that
24 could have been raised in the prior action. See Amin v.
25 Khazindar, 112 Cal. App. 4th 582, 590 (2003). Thus, the
26 Court must consider whether Plaintiffs could have raised

1 their claims regarding irregularities in the foreclosure
2 and trustee's sale in the Unlawful Detainer Action.

3
4 The defenses available to a defendant in an unlawful
5 detainer action are limited. As the California Supreme
6 Court explained, an unlawful detainer "proceeding is
7 summary in character; . . . ordinarily, only claims
8 bearing directly upon the right of immediate possession
9 are cognizable." Vella v. Hudgins, 20 Cal. 3d 251, 255
10 (1977). As such, "a judgment in unlawful detainer
11 usually has very limited res judicata effect and will not
12 prevent one who is dispossessed from bringing a
13 subsequent action to resolve questions of title or to
14 adjudicate other legal and equitable claims between the
15 parties." Id. at 255 (emphasis added); Mehr v. Super.
16 Ct., 139 Cal. App. 3d 1044, 1049 (1983) ("Because of its
17 summary character, an unlawful detainer action is not a
18 suitable vehicle to try complicated ownership issues
19 involving allegations of fraud."). Yet, title may be
20 litigated in an unlawful detainer action to a "limited
21 extent, as provided by" California Code of Civil
22 Procedure section 1161a. Vella, 20 Cal. 3d at 255
23 (citing Cheney v. Trauzettel 9 Cal. 2d 158, 159 (1937)).

24
25 In Vella, the California Supreme Court held that a
26 judgement in a prior unlawful detainer action did not bar
27 a subsequent action alleging that the defendant had
28

1 fraudulently induced the plaintiff to default on a note
2 so the defendant could foreclose on the property. 20
3 Cal. 3d at 254-55. The court noted that title to
4 property generally cannot be tried in an unlawful
5 detainer action, but cited section 1161a as a "narrow and
6 sharply focused" exception that permits a party "who has
7 purchased property at a trustee's sale and seeks to evict
8 the occupant in possession [to] show that he acquired the
9 property at a regularly conducted sale and thereafter
10 'duly perfected' his title." Id. at 255-56 ("[C]ourts
11 have held that subsequent fraud or quiet title suits
12 founded upon allegations of irregularity in a trustee's
13 sale are barred by the prior unlawful detainer judgment."
14 (emphasis added)); see also Freeze v. Salot, 122 Cal.
15 App. 2d 561, 566-67 (1954); Bliss v. Sec. First Nat'l
16 Bank, 81 Cal. App. 2d 50, 58 (1947); Seidell v. Ango-Cal.
17 Trust Co., 55 Cal. App. 2d 913, 918, 921 (1942).

18
19 "In fact, '[a]lthough most issues unrelated to
20 possession can be raised in a subsequent action between
21 the parties, the issue of the irregularity of the
22 foreclosure or execution sale is barred by a judgment in
23 an unlawful detainer action.'" Lai, 2010 WL 3419179, at
24 *4 (citing 7 Miller & Star, Cal. Real Est. § 19.223 (3d
25 ed.)). Where the fraud alleged in a second action is not
26 connected directly to the trustee's sale, however,
27 relitigation is not barred unless the party asserting res
28

1 judicata as a defense shows that the plaintiff had a full
2 and fair opportunity to litigate the issue of ownership
3 in the unlawful detainer proceeding. Vella, 20 Cal. 3d
4 at 257.

5
6 This narrow exception is illustrated by the
7 California Court of Appeal's holding in Malkoskie v.
8 Option One Mortgage Corp., 188 Cal. App. 4th 968 (2010).
9 There, the plaintiffs defaulted on their mortgage
10 payments, which resulted in the commencement of
11 foreclosure proceedings by Alliance Title Company, as
12 trustee for Option One, the beneficiary named in the deed
13 of trust. Id. at 971-72. Wells Fargo acquired the
14 property at the trustee's sale and filed an unlawful
15 detainer action against the plaintiffs. Id. In
16 response, the plaintiffs argued that the foreclosure sale
17 was invalid due to improper notice and because there were
18 "irregularities in the sale." Id. at 972. The
19 plaintiffs and Wells Fargo agreed to the entry of a
20 stipulated judgment, and the plaintiffs were forcibly
21 evicted. Id. The plaintiffs later filed a civil lawsuit
22 against Option One and Wells Fargo, among others,
23 alleging causes of action for declaratory relief, quiet
24 title, cancellation of trustee's deed, willful wrongful
25 foreclosure, negligent wrongful foreclosure, wrongful
26 eviction, and negligence. The trial court sustained the
27 defendants' demurrer without leave to amend. The
28

1 California Court of Appeal affirmed, holding that "the
2 stipulated judgment in the related unlawful detainer
3 action brought by Wells Fargo against plaintiffs was res
4 judicata as to plaintiffs' claims in this action which
5 all arise from the alleged invalidity of the foreclosure
6 sale." Id. at 973, 976 ("We therefore hold the unlawful
7 detainer judgment has claim preclusive effect in this
8 action challenging the validity of Wells Fargo's
9 title.").

10
11 In reaching its decision, the California Court of
12 Appeal rejected the plaintiffs' contention that the issue
13 of whether the trustee had the legal authority to proceed
14 with the foreclosure was not embraced or resolved by the
15 unlawful detainer action. Id. at 973-76. The court
16 explained that "the validity of Wells Fargo's title had
17 to be resolved in the unlawful detainer action" and "by
18 stipulating to judgment against them, plaintiffs conceded
19 the validity of Wells Fargo's allegations that the sale
20 had been duly conducted and operated to transfer 'duly
21 perfected' legal title to the property." Id. at 974,
22 976. As a result, the court found that the plaintiffs'
23 assertion "that no valid legal title passed to Wells
24 Fargo in the sale . . . [was] precluded by their
25 voluntary stipulation to a judgment that necessarily
26 decided valid title passed to Wells Fargo entitling the
27 bank to possess the property." Id. at 975-76.

1 As in Malkoskie, Plaintiffs' claims here are based on
2 the same primary right at issue in the unlawful detainer
3 proceeding, i.e., the right to the Property. Plaintiffs
4 assert the Court should invalidate the foreclosure and
5 trustee's sale because "at the time Cal-Western initiated
6 the foreclosure, it was not appointed the Trustee" and
7 "Ohio Savings had already been closed by the FDIC." (FAC
8 ¶ 11.) Further, Plaintiffs allege that "Wells Fargo was
9 not a beneficiary or in the chain of title." (Id. ¶ 12.)
10 In the Unlawful Detainer Complaint, however, Fannie Mae
11 alleged that it acquired the property at a regularly
12 conducted trustee's sale and thereafter duly perfected
13 its title. (Unlawful Detainer Compl. ¶ 1.) The validity
14 of the foreclosure process, trustee's sale, and Fannie
15 Mae's acquisition of the Property were all encompassed by
16 the Unlawful Detainer Action.

17
18 Plaintiffs chose not to defend the Unlawful Detainer
19 Action, however, and judgment was entered against them.
20 Plaintiffs then chose not to move to set aside the
21 default judgment or to appeal that ruling. Moreover,
22 Plaintiffs have not alleged that they discovered new
23 facts or evidence since the Superior Court issued the
24 judgment nor have Plaintiffs provided any reason for
25 their failure to defend that case. Instead, Plaintiffs
26 filed this lawsuit in which the factual allegations

1 exclusively relate to irregularities in the foreclosure
2 proceedings and trustee's sale.

3
4 Courts consistently have held that such claims may
5 not be relitigated following the entry of judgment in an
6 unlawful detainer action. See Ann v. Tindle, 321 Fed.
7 Appx. 619, 619-20 (9th Cir. 2009) (holding an earlier
8 unlawful detainer action was res judicata to plaintiff's
9 breach of contract and civil rights claims because the
10 claims "concern[ed] the same primary right as the
11 unlawful detainer action . . .: [plaintiff's] rights to
12 the apartment."); Dancy v. Aurora Loan Servs., No. C 10-
13 2602 SBA, 2011 WL 835787, at *4-6 (N.D. Cal. Mar. 4,
14 2011) (holding an earlier unlawful detainer action was
15 res judicata to plaintiff's action to quiet title);
16 Carter v. U.S. Bank N.A., No. 10CV2365 DMS (POR), 2011 WL
17 1004830, at *3 (S.D. Cal. Mar. 18, 2011) (same as to
18 plaintiff's claims to set aside the trustee's sale and
19 cancel the trustee's deed); Lai, 2010 WL 3419179, at *3-6
20 (same as to plaintiff's claims to void or set aside the
21 deed of trust and foreclosure sale); Velasquez v. U.S.
22 Bank Nat'l Ass'n, No. CV 09-1104 PSG (AJWx), 2009 WL
23 1941807, at *2-3 (C.D. Cal. July 1, 2009) (same as to
24 plaintiff's action to quiet title); Malkoskie, 188 Cal.
25 App. 4th at 972-73; cf. Albano, 244 F.3d at 1064 (holding
26 a default judgment in a foreclosure action was res

1 judicata to borrowers' later-filed TILA claim under
2 Hawaii law).

3
4 Plaintiffs attempt to avoid the preclusive effect of
5 the Unlawful Detainer judgment by arguing that the
6 Superior Court necessarily did not reach Plaintiffs'
7 arguments because the case was decided on a default
8 judgment basis. This argument fails for two reasons.
9 First, as set forth above, California recognizes the
10 preclusive effect of default judgments. Secondly,
11 whether or not the Superior Court actually considered
12 Plaintiffs' arguments is irrelevant to a res judicata
13 inquiry because the Court considers not only those issues
14 that actually were litigated, but also those that could
15 have been litigated. Albano, 244 F.2d at 1064; Palomar
16 Mobilehome Park Ass'n, 989 F.2d at 364.

17
18 Despite the summary nature of California's
19 foreclosure proceedings, when a purchaser brings an
20 unlawful detainer action pursuant to California Code of
21 Civil Procedure section 1161a, the purchaser must
22 demonstrate that it acquired the property at a regularly
23 conducted sale and thereafter duly perfected its title.
24 Cal. Code. Civ. P. § 1161a. In the Unlawful Detainer
25 Complaint, Fannie Mae alleges it acquired title to the
26 Property "following a non-judicial foreclosure sale held
27 in accordance with California Civil Code §§ 2429 et seq."

1 and that "Plaintiff's title was duly perfected by the
2 Trustee's Deed Upon Sale recorded on July 27, 2010 . . .
3 ." (Defs.' Suppl. RJN, Ex. A (Unlawful Detainer Compl.)
4 ¶ 1.) Plaintiffs' defense of irregularities in the
5 foreclosure and trustee's sale could have been litigated
6 in the Unlawful Detainer Action. See Mehr, 139 Cal. App.
7 at 1049. This defense, if meritorious, would have
8 ineluctably prevented the unlawful detainer, as Fannie
9 Mae was required to establish compliance with the
10 applicable statutes governing the foreclosure and
11 trustee's sale, as well as establish it had perfected
12 title.

13
14 Thus, the judgment rendered in connection with
15 Fannie's Mae's complaint "necessarily adjudicated issues
16 relating to the propriety of the foreclosure." Dancy,
17 2011 WL 835787, at *6. If Plaintiffs wished to challenge
18 that judgment, the proper procedure would have been to
19 file a motion to set aside the default. Instead,
20 Plaintiffs belatedly filed this action, seeking to
21 relitigate claims they should have raised in the Unlawful
22 Detainer Action. Bringing wrongful foreclosure, wrongful
23 eviction, and quiet title claims "involves pleading a
24 different theory of recovery, but addresses the same
25 injury." Ann, 321 Fed. Appx. at 620 (citing Zimmerman v.
26 Stotter, 160 Cal. App. 3d 1067 (1984)). Thus, the

1 Unlawful Detainer Action and the instant action seek to
2 vindicate the same primary right.

3
4 **iii. Identity of the Parties**

5 Finally, to establish a defense of claim preclusion,
6 Defendants must show that the parties in each case are
7 identical or in privity with each other. Mycogen Corp.,
8 28 Cal. 4th at 896. Specifically, "[i]n order for res
9 judicata to apply, the party against whom the defense is
10 asserted must have been 'a party or was in privity with a
11 party to the prior adjudication.'" Consumer Advocacy
12 Grp., Inc., v. ExxonMobil, Corp., 168 Cal. App. 4th 675,
13 689 (2008) (citing Citizens for Open Access to Sand &
14 Tide, Inc. v. Seadrift Ass'n, 60 Cal. App. 4th 1053, 1065
15 (1998)); see also Nguyen v. LaSalle Bank Nat'l Ass'n, No.
16 09-CV-0881 DOC (SSx), 2009 WL 3297269, *4, *8 (C.D. Cal.
17 Oct. 13, 2009) (holding a plaintiff was barred from
18 bringing claims related to foreclosure where bank brought
19 an earlier suit against plaintiff for unlawful detainer).
20 Here, Plaintiffs were defendants in the Unlawful Detainer
21 Action brought in state court by Defendant Fannie Mae and
22 res judicata is asserted against them. Accordingly,
23 Defendants also satisfy this element.

24
25 Defendants have established all of the elements
26 necessary to apply the doctrine of claim preclusion. The
27 judgment rendered in the Unlawful Detainer Action thus
28

1 bars all claims by Plaintiffs that challenge procedural
2 defects in the foreclosure or trustee's sale. See
3 Malkoskie, 188 Cal. App. 4th at 975-76. As all of
4 Plaintiffs' allegations in the FAC relate to the
5 irregularity of the foreclosure and trustee's sale, which
6 is a defense Plaintiffs could have raised in the Unlawful
7 Detainer Action, Plaintiffs' action is barred by the
8 prior unlawful detainer proceeding. See Velasquez, 2009
9 WL 1941807, at *3 (reaching the same result on similar
10 facts); see also FAC ¶¶ 24-26 (wrongful foreclosure
11 claim), 33-34 (wrongful eviction claim), 39-40 (quiet
12 title claim), 45 (unfair business practices claim).
13 Defendants accordingly have met their burden of
14 demonstrating that Plaintiffs' present attacks on the
15 trust deed, foreclosure proceedings, and trustee's sale
16 are an attempt to relitigate the same primary right
17 between the same parties. Accordingly, Plaintiffs'
18 claims are barred under the doctrine of claim preclusion.

2. Issue Preclusion (Collateral Estoppel)

21 As above, "a federal court considering whether to
22 apply issue preclusion based on a prior state court
23 judgment must look to state preclusion law." McInnes v.
24 California, 943 F.2d 1088, 1092-93 (9th Cir. 1991)
25 (citing 28 U.S.C. § 1738). The scope of the doctrine of
26 issue preclusion, also known as collateral estoppel,
27 differs from that of claim preclusion. While claim

1 preclusion bars litigation in a subsequent action of any
2 issue that could have been raised in the prior action,
3 see Amin, 112 Cal. App. 4th at 590 ("the rule is that the
4 prior judgment is res judicata on matters which were
5 raised or could have been raised, on matters litigated or
6 litigable"), issue preclusion, by contrast, bars
7 relitigation of issues that were actually litigated and
8 necessarily decided in a prior action, Morris v. Blank,
9 94 Cal. App. 4th 823, 830-31 (2001) ("Collateral estoppel
10 bars relitigation of an issue actually litigated and
11 necessarily decided in prior litigation."); see also
12 Modesto City Sch. v. Educ. Audits Appeal Panel, 123 Cal.
13 App. 4th 1365, 1379 (2004) ("Generally, collateral
14 estoppel bars the party to a prior action, or one in
15 privity with him, from relitigating issues finally
16 decided against him in the earlier action") (citation
17 omitted); U.S. Golf Ass'n v. Arroyo Software Corp., 69
18 Cal. App. 4th 607, 616 (1999) (to invoke collateral
19 estoppel, a party must show that the identical issue was
20 actually litigated in the prior action).

21
22 Under California law, a party is precluded from
23 relitigating an issue if (1) the issue decided in a prior
24 adjudication is identical with that presented in the
25 action in question; (2) there was a final judgment on the
26 merits; and (3) the party against whom preclusion is
27 asserted was a party or in privity with a party to the
28

1 prior adjudication. Clemmer v. Hartford Ins. Co., 22
2 Cal. 3d 865, 874 (1978).

3
4 **i. Final Judgment on the Merits**

5 Where a judgment is entered by default, as here, it
6 collaterally estops relitigation of all of the material
7 allegations of the complaint and every fact necessary to
8 uphold the default judgment. See Mitchell v. Jones, 172
9 Cal. App. 2d 580, 586-87 (1959) ("[A] default judgment
10 conclusively establishes, between the parties so far as
11 subsequent proceedings on a different cause of action are
12 concerned, the truth of all material allegations
13 contained in the complaint in the first action, and every
14 fact necessary to uphold the default judgment"); Four
15 Star Elec., Inc. v. F & H Constr., 7 Cal. App. 4th 1375,
16 1380 (1992) (quoting Mitchell); Gottlieb v. Kest, 141
17 Cal. App. 4th 110, 149 (2006) ("California . . . accords
18 collateral estoppel effect to default judgments . . .
19 ."). The judgment is not conclusive, however, with
20 respect to any defense or issue that was not raised and
21 that is not necessary to uphold the judgment. Mitchell,
22 172 Cal. App. 2d at 586-87; Four Star Elec., Inc., 7
23 Cal. App. 4th at 1379-81.

24
25 **ii. Identity of Issues**

26 As noted above, "a default judgment conclusively
27 establishes, between the parties so far as subsequent
28

1 proceedings on a different cause of action are concerned,
2 the truth of all material allegations contained in the
3 complaint in the first action, and every fact necessary
4 to uphold the default judgment." Mitchell, 172 Cal. App.
5 2d at 586-87.

6
7 When a purchaser brings an unlawful detainer action
8 pursuant to California Code of Civil Procedure section
9 1161a, the purchaser must show that it acquired the
10 property at a regularly conducted sale and thereafter
11 duly perfected its title. Cal. Code. Civ. P. 1161a. In
12 its Unlawful Detainer Complaint, Fannie Mae alleges it
13 acquired title to the Property "following a non-judicial
14 foreclosure sale held in accordance with California Civil
15 Code §§ 2429 et seq." and that its "title was duly
16 perfected by the Trustee's Deed Upon Sale recorded on
17 July 27, 2010" (Unlawful Detainer Compl. ¶ 1.)
18 In the instant action, Plaintiffs request that Court
19 declare the foreclosure and trustee's sale invalid and
20 restore Plaintiffs as the owners of the Property. The
21 issues of whether the foreclosure and trustee's sale were
22 procedurally sound were material and necessary to uphold
23 the default judgment, however. Accordingly, Plaintiffs'
24 claims related to the foreclosure, trustee's sale, and
25 unlawful detainer are barred because the Superior Court's
26 judgment collaterally estops relitigation of those
27 issues. See Mitchell, 172 Cal. App. 2d at 586-87.

1 **iii. Identity of the Parties**

2 Moreover, Defendants clearly meet the final factor -
 3 the party against whom preclusion is asserted was a party
 4 or in privity with a party to the prior adjudication -
 5 because Plaintiffs were defendants in the Unlawful
 6 Detainer Action. (See Unlawful Detainer Compl. ¶ 2.)
 7 Plaintiffs' claims accordingly also are barred under the
 8 doctrine of collateral estoppel.

9
 10 **B. Failure to Provide or Allege Tender**

11 In addition to preclusion barring Plaintiffs from
 12 raising various arguments in favor of setting aside the
 13 foreclosure and trustee's sale, Plaintiffs' failure to
 14 make an offer of tender precludes relief.

15
 16 "A tender is an offer of performance made with the
 17 intent to extinguish the obligation." Arnolds Mgmt.
 18 Corp. v. Eischen, 158 Cal. App. 3d 575, 580 (1984).
 19 Under California law, a party seeking to set aside a
 20 foreclosure or trustee's sale must make a "valid and
 21 viable tender of payment of the indebtedness owing." In
 22 re Worcester, 811 F.2d 1224, 1230 (9th Cir. 1987)
 23 (citation omitted); FCPI RE-HAB 01 v. E & G Invs., Inc.,
 24 207 Cal. App. 3d 1018, 1021 (1989) (holding a "valid and
 25 viable tender of payment of the indebtedness owing is
 26 essential to an action to cancel a voidable sale under a
 27 deed of trust."); Karlsen v. Am. Sav. & Loan Ass'n, 15

1 Cal. App. 3d 112, 117-18 (1971) (holding a party seeking
2 to set aside a foreclosure sale must make a "valid and
3 viable tender of payment of the indebtedness owing").
4 Without an allegation or offer of tender in the amount of
5 the debt owed, a claim for "irregularity in the sale
6 procedure" cannot be maintained. Abdallah v. United Sav.
7 Bank, 43 Cal. App. 4th 1101, 1109 (1996); LaGrone v.
8 Johnson, 534 F.2d 1360, 1362 (9th Cir. 1976) (reversing
9 judgment in favor of borrower where rescission was not
10 conditioned on tender of funds); Frison v. WMC Mortg.
11 Corp., No. 09-1733 LAB NLS, 2010 WL 2894980, at *4 (S.D.
12 Cal. Sept. 30, 2010) ("In other words, a plaintiff must
13 plead that she has paid amount of indebtedness or at
14 least is prepared to pay it if [injunctive relief] is
15 granted."); Alicea v. GE Money Bank, No. C 09-00091 SBA,
16 2009 WL 2136969 *3 (N.D. Cal. July 16, 2009) ("When a
17 debtor is in default of a home mortgage loan, and a
18 foreclosure is either pending or has taken place, the
19 debtor must allege a credible tender of the amount of the
20 secured debt."); U.S. Cold Storage v. Great W. Sav. &
21 Loan Ass'n, 165 Cal. App. 3d 1214, 1222 (1985) ("[T]he
22 law is long-established that a trustor or his successor
23 must tender the obligation in full as a prerequisite to
24 challenge of the foreclosure sale.").

1 Plaintiffs made no offer to tender at the time they
2 filed their Complaint nor have they made such an offer
3 thereafter. Plaintiffs have not offered any equitable
4 arguments to justify their requested interference with
5 the completed foreclosure proceedings or the trustee's
6 sale. As Plaintiffs have failed to offer tender, the
7 Court cannot set aside the allegedly unlawful conveyance
8 of title or trustee's sale. The Court accordingly GRANTS
9 Defendants' Motion.

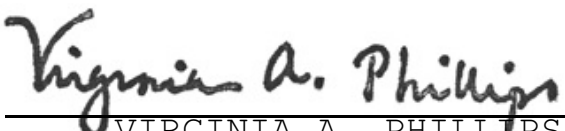
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11 **C. Leave to Amend**

12 When granting a motion to dismiss, a court generally
13 is required to grant leave to amend unless amending the
14 pleadings would be futile. See Deveraturda v. Globe
15 Aviation Sec. Servs., 454 F.3d 1043, 1049-50 (9th Cir.
16 2006); Bonin v. Calderon, 59 F.3d 815, 845 (9th Cir.
17 1995) (holding that futility is a sufficient ground upon
18 which to deny leave to amend). As set forth above,
19 Plaintiffs are barred under the doctrines of claim and
20 issue preclusion from relitigating claims based on
21 alleged improprieties in the foreclosure and trustee's
22 sale. Thus, the Court concludes that further amendment
23 to the pleadings would be futile. See Ann, 321 Fed.
24 Appx. at 620 (affirming a district court's denial of
25 leave to amend where the court found an earlier unlawful
26 detainer action was res judicata to a plaintiff's action
27 for breach of contract and civil rights violations).

1 **IV. CONCLUSION**

2 For the reasons stated above, the Court GRANTS
3 Defendants' Motion to Dismiss with prejudice.
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8 Dated: August 16, 2011
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10 VIRGINIA A. PHILLIPS
11 United States District Judge
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